

International Brotherhood of Teamsters Local Union No. 170 and Spiniello Construction Co. and Laborers' International Union of North America, Local 243. Case 1-CD-941-1

April 28, 1995

DECISION AND DETERMINATION OF DISPUTE

BY CHAIRMAN GOULD AND MEMBERS STEPHENS AND COHEN

The charge in this Section 10(k) proceeding was filed June 29, 1994, and amended July 19, 1994, by Spiniello Construction Company, the Employer, alleging that the Respondent, International Brotherhood of Teamsters Local Union No. 170 (Teamsters) violated Section 8(b)(4)(D) of the National Labor Relation Act by engaging in proscribed activity with an object of forcing or requiring the Employer, Spiniello Construction Co., to assign certain work to employees it represents rather than to employees represented by Laborers' International Union of North America, Local 243 (Laborers). The hearing was held on August 13, 1994, before Hearing Officer Thomas J. Morrison. Thereafter, the Employer and Laborers filed briefs.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board affirms the hearing officer's rulings, finding them free from prejudicial error. On the entire record, the Board makes the following findings.

I. JURISDICTION

The Employer is a New Jersey corporation engaged in the business of construction, rehabilitation, and refurbishing work of water pipes. It is currently performing construction work in Worcester, Massachusetts, pursuant to a contract with the City of Worcester. It annually purchases materials valued in excess of \$50,000 directly from points outside the Commonwealth of Massachusetts and has annual revenues in excess of \$50,000. The parties stipulated, and we find, that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that Local 170 and Local 243 are labor organizations within the meaning of Section 2(5) of the Act.

II. DISPUTE

A. Background and Facts of Dispute

The Employer operates a seasonal business which begins in April and runs through December of each year. For several years the Employer has been engaged in cleaning and relining the water mains and pipes in the city of Worcester, under a contract subject to rebidding each year. In performing the work, the Em-

ployer digs up sections of the pipe and cleans and recoats the interior of the pipe. In performing the job, the Employer employs approximately 10 laborers, some employees working as operating engineers, and 1 employee (a teamster) represented by the Teamsters.

The teamster drives either a tractor-trailer or a dump truck, hauling pipe from the Employer's Worcester location to jobsites around the city. Once at the jobsite, the teamster remains with the truck. The laborer employees, represented by the Laborers, drive the other vehicles of the Employer from the Worcester location to the jobsites around the city. At the jobsites, these laborers work on all facets of the job, from unloading trucks to digging holes.

About August 1993, when the Employer began the current phase of the job, Dewey, the Employer's regional manager, told Valeri, the Teamsters' business agent, that he would need one employee represented by the Teamsters and that this was the number the Employer had been using during the earlier phases of the Worcester job. Valeri agreed with Dewey and a contract was drawn up by the Employer, which contract contained specific language limiting the number of employees represented by Teamsters who would be used on the job. As a result of these discussions and the agreement of the Employer and the Teamsters, the Employer employed one employee represented by the Teamsters. Employees represented by Laborers worked alongside the teamster. Their job duties included driving the approximately 12 to 15 vehicles, used, at one time or another, by the Employer at the jobsites. This arrangement continued until the Employer shut down in December.

The operation recommenced in the spring of 1994. Again, the Employer employed 1 employee represented by the Teamsters and approximately 10 employees represented by Laborers. Sometime around April 1994, the Teamsters became concerned that employees whom it did not represent were driving the Employer's vehicles at the Worcester jobsites, and began filing grievances with the Employer over the matter. Dewey and Valeri had a number of discussions in which Valeri told Dewey that he wanted the Employer to put approximately three more teamsters on the payroll, and that if the Employer did not do so, the Teamsters would either strike or shut down the Employer's operation. Dewey then called Porter, the Laborers' business agent, and related the conversation with Valeri. Porter, among other things, told Dewey that the Laborers would strike the job if the work being done by employees represented by it was assigned to employees represented by the Teamsters.

B. Work in Dispute

The work in dispute involves the driving of dump trucks, flatbeds, and utility trucks to and from, and on,

the Employer's project sites while it cleans and relines water mains and pipes pursuant to its contract with the City of Worcester.

C. Contentions of the Parties

The Employer and the Laborers argue that the case is properly before the Board for determination under Section 10(k). The Employer and the Laborers argue that their collective-bargaining agreement provides that the Laborers has jurisdiction over the work in dispute. They also note what they contend is limiting language in the Teamsters collective-bargaining agreement with the Employer that: "the Union will refer one (1) Teamsters Local 170 member to cover the alleged Teamster jurisdiction concerning job engaging for the duration of the job." The Employer and the Laborers also argue that the work in dispute should be awarded to employees represented by the Laborers based on the relevant factors which the Board normally considers in this type of proceeding.

D. Applicability of the Statute

Before the Board may proceed with a determination of dispute under Section 10(k) of the Act, it must be satisfied that there is reasonable cause to believe that Section 8(b)(4)(D) has been violated and that the parties have not agreed on a method for the voluntary adjustment of the dispute.

As set forth above, the Teamsters threatened to either strike the employer or "shut the job down" if the employer did not increase the number of employees represented by the Teamsters on the job.

We find that the foregoing facts establish reasonable cause to believe that a violation of Section 8(b)(4)(D) has occurred and, as there is no claim that an agreed-on method of voluntary adjustment exists, we find that the dispute is properly before the Board for determination.

E. Merits of the Dispute

Section 10(k) of the Act requires the Board to make an affirmative award of the disputed work after giving due consideration to all relevant factors involved. The following factors are relevant to making a determination of the dispute before us:

1. Certifications and collective-bargaining agreements

Neither of the Unions has been shown to have been certified by the Board as the collective-bargaining representative of the Employer's employees.

As noted above, the Employer is a party to current collective-bargaining agreements with both the Teamsters and the Laborers. The jurisdictional provisions of both of the collective-bargaining agreements arguably cover the work in dispute. The Employer's contract

with Teamsters, however, appears to limit the number of employees represented by the Teamsters to one per employer job. Accordingly, we find that the factor of collective-bargaining agreements tends to favor an award of work to employees represented by the Laborers.

2. Employer preference and past practice

The preference of the Employer is to assign the work in dispute to employees represented by the Laborers. It is undisputed that the Employer has assigned the driving of the small trucks to laborers for over 24 years. The Teamsters presented no evidence indicating that the employees it represents have ever performed work similar to that in dispute for the Employer. We find that the factors of Employer preference and past practice favor an award of the disputed work to the employees represented by Laborers.

3. Area and industry practice

There was little testimony concerning area and industry practice. Accordingly, we find the evidence inconclusive as to an area or industry practice in favor of either group of employees.

4. Relative skills

The Employer does not provide any training to its drivers. Those laborers that have been assigned to drive the Employer's vehicles all have the required commercial drivers' license. There is no claim that employees represented by the Teamsters do not possess the required commercial license to operate the Employer's vehicles. Accordingly, we find that this factor does not favor an award of the disputed work to employees represented by either group.

5. Economy and efficiency of operations

The Employer presented testimony that it is more efficient to assign the disputed work to employees represented by the Laborers. Dewey testified that the smaller dump trucks, pickup trucks, flatbed trucks, and utility trucks on the jobsite are usually only driven for approximately an hour or two per day, with these vehicles sitting idle either on or off the jobsite for the rest of the day. During the remainder of the day, when not operating the trucks, the employees represented by the Laborers perform regular laborers' work. Thus, if a teamster were used to replace a laborer, the Employer would have to lay off a trained laborer and hire a teamster for a few minutes work. Porter testified that employees represented by the Laborers have special training to do the kind of utility work done by the Employer. In addition, they receive special training in the pipe relining work done by the Employer and the employees represented by the Teamsters do not. Accordingly, we find that the factor of economy and effi-

ciency of operations favors an award of the disputed work to employees represented by the Laborers.

Conclusions

After considering all the relevant factors, we conclude that employees represented by the Laborers are entitled to perform the work in dispute. We reach this conclusion relying on factors of collective-bargaining agreements, Employer preference and past practice, and efficiency and economy of operations. In making this determination, we are awarding the work to employees represented by the Laborers not to that Union or its members.

DETERMINATION OF DISPUTE

The National Labor Relations Board makes the following Determination of Dispute.

1. Employees of Spiniello Construction Co., represented by Laborers' International Union of North

America, Local 243, are entitled to perform the driving of dump trucks, flatbeds, and utility trucks to and from, and while on, the Employer's project sites while it cleans and relines water mains and pipes pursuant to its contract with the City of Worcester.

2. International Brotherhood of Teamsters Local Union No. 170 is not entitled by means proscribed by Section 8(b)(4)(D) of the Act to force or require Spiniello Construction Co. to assign the above work to employees represented by it.

3. Within 10 days from this Determination of Dispute, International Brotherhood of Teamsters Local Union No. 170 shall notify the Regional Director for Region 1 in writing whether it will refrain from forcing or requiring the Employer, by means proscribed by Section 8(b)(4)(D), to assign the disputed work in a manner inconsistent with this determination.